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FISCAL IMPACT STATEMENT

LS 7538

BILL NUMBER: HB 1746

NOTE PREPARED: Feb 17, 2005

BILL AMENDED: Feb 15, 2005

SUBJECT: Sex Offender Registry and Death Sentences.

FIRST AUTHOR: Rep. Budak

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill has the following provisions:

- A. It adds registered neighborhood associations to the list of entities that must periodically receive the Sex and Violent Offender Directory published by the Criminal Justice Institute.
- B. It provides that the state shall seek a death sentence for a person who intentionally kills a person under 18 years of age while committing or attempting to commit child molesting, criminal deviate conduct, kidnapping, rape, or criminal confinement.
- C. It adds criminal confinement to the list of crimes that the state may seek a death sentence or life imprisonment without parole for when murder is also committed.

Effective Date: July 1, 2005.

Explanation of State Expenditures: (Revised) *Provision A* -- Current statute requires the Indiana Criminal Justice Institute (ICJI) to make a computer disk available containing the Indiana Sex and Violent Offender Directory to the following entities at least one time every six months: (1) all school corporations; (2) all nonpublic schools; (3) all state agencies that license individuals who work with children; (4) the State Personnel Department; (5) all licensed and registered child care facilities; (6) and any other entity that provides services to children and requests the directory. This bill would add an additional entity to this list, registered neighborhood associations. Additional expenditures by the ICJI are expected to be minimal.

Background on Provision A: In 2003, the ICJI conducted an information campaign to inform the approximate 8,500 entities that receive the Directory that it is available on both the Internet and CD-ROM. Recipients were asked if they preferred to receive the Directory on CD-ROM or to access its information on

the Internet (both forms are available at no cost to the recipient). Less than 5% requested the Directory on CD-ROM. The benefit to obtaining the Directory on the Internet is that individuals identified on the Directory change daily, thus, Internet information is more current. The ICJI spends approximately \$1,000 per distribution (or \$2,000 annually). The cost for each disk is approximately \$2.61.

At the time of the most recent distribution, four groups receiving the information identified themselves as neighborhood associations, and one requested a copy of the Directory.

The number of neighborhood associations in the state, and thus the number that would choose to register with the ICJI is unknown. It is assumed that the majority of associations exist in cities or larger populated towns. Each governing body registers neighborhood associations differently. The City of Indianapolis reports it has 339 registered neighborhood associations; the City of Bloomington has approximately 35.

The amount of additional expenditures that the state will experience is dependent on the total number of neighborhood associations in the state which choose to (a) register with the ICJI, and (b) have the Directory supplied to them on CD-ROM. The total amount of additional expenditures are unknown. It is likely, however, that any additional expenditures will be small. The largest city in Indiana, Indianapolis, with 339 registered neighborhood associations, would create an approximate increase of \$44 every six months ($339 \times 5\% \times \$2.61 = \44.24).

Depending on the number of neighborhood associations that choose to register, the ICJI may need additional staff. The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Provision B -- State expenditures depend on the outcome of the criminal trial. If a prosecuting attorney requests the death penalty and the court imposes a death sentence on a defendant, then state expenditures will be less than when a prosecuting attorney seeks and the court imposes life imprisonment without parole. And a determinate sentence of 65 years where the offender is released after 32½ years for good behavior requires less expenditures than the other two sentences. However, the combined costs for the state agencies and county governments for a death penalty case, even when the offender is executed, exceeds the costs of a trial where the most serious sentence would be life without parole or a determinate sentence of 65 years.

Background Information on Provision B: In the following analysis, LSA staff compared the costs that the state assumes for state assistance to the counties in the trial stage, and the staff costs during direct appeal, post conviction relief, and federal habeas corpus review. The average age of 84 offenders who were sentenced to death was 30 at the time when a request for a death penalty was made against them.

LSA assumed that convicted offenders would:

- spend an average period of 16 years on death row before being executed if the death penalty was imposed;
- serve 32½ years of a sentence if sentenced to 65 years in prison since most offenders reduce their sentences by one day for each day that they comply with prison facility codes of behavior;
- remain in DOC facilities until the age of 77 if sentenced to life without parole.

Because these costs occur at different points in time, a net present value was prepared for each cost stream assuming an annual inflation rate of 5%. The following table presents the net present value of these costs.

Post Trial Costs to the State of Sentencing Options for a 30-Year-Old Offender Sentenced for Aggravated Murder			
<u>Sentence</u>	<u>Number of Years of Incarceration</u>	<u>Net Present Value for:</u>	
		<u>State Expenditures</u>	<u>State and County Expenditures</u>
Death Penalty	16*	\$575,861	\$741,246
Life Without Parole	47	\$582,685	\$622,957
65 Years with 50% Credit Time	32.5	\$466,460	\$506,732
* Based on nine offenders who appealed execution.			

The following variables are included in this analysis.

Cost of Health Care – It is assumed that the health care costs rise substantially in the later years of an offender's life. Consequently, the costs to the Department of Correction (DOC) will increase substantially for older offenders. The data in the following table was used to account for the added cost to DOC for the later years of an offender who is sentenced to life without parole.

Estimated Costs of Health Care by Age Group	
<u>Age Group</u>	<u>Estimated Cost</u>
18 - 24	\$ 1,095
25 - 44	\$ 1,844
45 - 64	\$ 4,319
over 65	\$ 8,589

Cost of Incarceration – The average annual expenditure for housing offenders (not including health care costs) is based on the average annual adult institution cost in FY 2004 of \$21,308 less the average annual health care costs of \$2,029.

Added Costs for Financial Assistance At Trial - The Public Defense Fund reimburses 50% of the authorized costs to counties when a death penalty trial is occurring and 40% when a noncapital case is being tried. The costs of a death penalty trial are higher because two attorneys are needed and two different trials occur.

The following shows the average costs incurred by the Public Defense Fund for death penalty and life without parole cases.

Cost Components for Murder Trials:		
	Death Penalty	Life Without Parole
Attorneys and Related Costs	\$107,804	\$27,370

Public Defense Fund expenditures for FY 1996 through FY 2002 for partially reimbursing counties for the costs of capital cases are reported for each fiscal year between 1998 and 2003.

Reimbursements for Capital Cases by Fiscal Year					
1998	1999	2000	2001	2002	2003
\$799,450	\$526,512	\$378,209	\$712,055	\$473,317	\$342,464

The Fund also partially reimburses counties for the costs of noncapital cases as reported for the fiscal years between 1998 and 2003.

Reimbursements (in Millions) for Noncapital Cases By Fiscal Year					
1998	1999	2000	2001	2002	2003
\$1.03	\$2.18	\$3.30	\$3.66	\$4.86	\$5.37

The Public Defense Fund receives an annual statutory allotment of \$3.4 M derived from a transfer from the state General Fund under IC 33-19-7-5 beginning in FY 2005 and a \$4.4 M. transfer beginning in FY 2006.

Added Costs of Appeals - There are three general stages of review of criminal cases at the state and federal level: direct appeal and post conviction relief at the state level and habeas corpus at the federal level. The Office of the Attorney General represents the state in all three stages of review in death penalty cases, and in direct appeal and habeas corpus if a determinate sentence is imposed. The State Public Defender's office represents convicted offenders requesting indigent counsel in post conviction relief.

The following costs were used to compare the costs between these sentencing options.

State Agency	Function	Death Penalty Trial	Life Without Parole
State Public Defender	Represents convicted offenders requesting indigent counsel in post conviction relief	\$191,182	\$3,724
Office of the Attorney General	Represents the state in all three stages of review in death penalty cases	\$72,503	\$12,004
Department of Correction	Execution costs and annual per diem and medical costs	\$20,588 for execution	annual per diem and medical costs
State Police	Security and appeals at execution	\$4,012	

The following shows the stages of review once the death penalty trial has been completed.

Review Level	Court of Review	Issues Permitted To Be Raised
Direct Appeal	State Supreme Court	Defendant required to show that what happened at trial was legally erroneous. Defendant may not present new evidence.
Post Conviction Relief (PCR)	Trial Court	Newly discovered evidence such as DNA and other issues may be presented.
Subsequent Appeal of PCR	State Supreme Court	Decides on the evidence presented at the PCR review.
Federal Habeas Corpus Review	Seventh Circuit Court of Appeals	Federal courts may not grant relief if the claim was waived in the state court or if the issue was not presented or properly presented in state court.

Explanation of State Revenues:

Explanation of Local Expenditures: (Revised) *Provisions B* -- Requiring a prosecuting attorney to seek the death penalty would significantly increase the costs to a county that is required to conduct such a trial. On average, the costs of a death penalty case is about four times as expensive as a trial where the most serious penalty would be life without parole.

Provision C -- Under current law, the prosecuting attorney would not be able to request either the death penalty or life without parole unless one of 16 aggravating circumstances under IC 35-50-2-9 could be cited when a murder occurred. This provision permits a prosecuting attorney to seek the death penalty when a criminal defendant is charged with both confining and murdering another person.

Background Information: Of the three possible sentencing options for murder, the death penalty is generally the most expensive for trial courts to conduct because two attorneys are required to represent the accused, and a bifurcated trial is conducted to determine guilt or innocence and whether a sentence of death is warranted. Life without parole is the next most expensive option because, while two attorneys are not required for legal representation, a bifurcated trial is also required to determine guilt or innocence and then whether a sentence of life without parole is warranted. Determinate sentencing of between 45 and 65 years is the least expensive option because one trial is conducted and two attorneys are not required to represent the defendant.

The following table summarizes the difference between these three options.

<u>Sentencing Option</u>	<u>Number of Defense Attorneys Needed</u>	<u>Type of Trial Conducted</u>
Death Penalty	Two	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Life Without Parole	One	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Determinate Sentence Between 45 and 65 Years	One	A single trial to determine guilt or innocence; a sentencing hearing is separate.

Consequently, the costs of legal representation for a case where the most serious sentence is between 45 and 65 years would likely be lower than the costs of a case involving life without parole.

No information is available on the costs of murder cases in which the most serious sentence was between 45 and 65 years of incarceration. However, at the request of the Criminal Law Study Commission, Legislative Services Agency staff compared the costs of death penalty cases and cases in which life without parole was the most serious outcome that could occur. The following table displays the cost components for a “typical death penalty trial and a trial where life without parole is the most serious sentence.

Cost Components for Murder Trials:		
	<u>Death Penalty</u>	<u>Life Without Parole</u>
Attorneys and Related Costs*	\$107,804	\$27,370
Jury and Related Costs	\$46,375	\$10,150
Cost of Appeals	\$54,355	\$5,466
Prosecuting Attorney	\$2,340	\$2,948
County Sheriff	\$8,472	\$4,380
Total Costs	\$219,346	\$50,314
*Net Costs After Reimbursement From Public Defense Fund		

The cost of legal representation for a criminal defendant in a death penalty case is four times as expensive as the costs of a criminal trial in which the most serious sentence is life without parole. The costs of a trial where a determinate sentence is the most serious sentence is likely to be less than the costs of a trial in which life without parole is the most serious sentence.

Explanation of Local Revenues:

State Agencies Affected: Indiana Criminal Justice Institute, Department of Correction, Office of the Attorney General, Office of the State Public Defender, State Police.

Local Agencies Affected: Local units of government. trial courts, county sheriff, prosecuting attorneys

Information Sources: Steve Hillman, Indiana State Police, 317-232-5899; Pam Marling, Bureau of Identification, Allen County, 260-449-7630; Jody Hollenbaugh, Whitley County, 260-244-6410; Mike

Eslinger, Indiana Sheriffs' Association, 317-356-3633; Jason Matejkowski, Indiana Criminal Justice Institute, 232-1232; Vickie Provine, City of Bloomington, 812-349-3505; Bob Wilch, City of Indianapolis, 327-5115. Indiana Supreme Court; *The Application of Indiana's Capital Sentencing Law, Findings of the Indiana Criminal Law Study Commission* (January 10, 2002); Website of Clark County (IN) Prosecuting Attorney, <http://www.clarkprosecutor.org/html/death/>; Agency for Healthcare Research and Quality, 2002 Full-Year Consolidated Data File (HC-070), Released December 2004. Medical Expenditure Panel Survey Household Component Data, Generated using MEPSnet/HC, <<http://www.meps.ahrq.gov/mepsnet/HC/MEPSnetHC.asp>>; Department of Correction.

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